

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ANTHONY DUANE MILLS PLAINTIFF
v. CIVIL ACTION NO. 5:17-cv-110-DCB-MTP
TRAVIS PATTEN, et al. DEFENDANTS

ORDER

This matter is before the Court on Magistrate Judge Michael T. Parker's Report and Recommendation. [ECF No. 123]. Therein, Magistrate Judge Parker recommends that Defendant Tony Nichols ("Nichols") and Defendant Anthony Nettles ("Nettles") Motion for Summary Judgment [ECF No. 119] be granted and that the Complaint [ECF No. 1] be dismissed with prejudice. Having carefully reviewed the Report and Recommendation, the Court finds it to be well taken and orders as follows:

Plaintiff Anthony Duane Mills ("Mills"), proceeding pro se and in forma pauperis, was incarcerated at the Adams County Jail but has since been released and lives in Natchez, Mississippi. This matter arises out of the events and circumstances surrounding and following an alleged 911 call that Plaintiff made in the early morning hours of March 3, 2016. Plaintiff contends that he dialed 911 to report that Adams County Deputy Walter Mackel ("Deputy Mackel") raped and sodomized him in his home. Plaintiff further contends that Deputy Nettles failed to

send an officer to investigate his call, and that Captain Nichols retaliated against him for claiming he had been raped by Deputy Mackel.

Defendants Nettles and Nichols moved for Summary Judgment [119] on November 15, 2019. Mills did not file a response to the Defendants Motion for Summary Judgment until April 8, 2020 - approximately five months later and well outside the deadline to do so. On April 29, 2020, Defendants moved to strike Mills' Response to the Motion for Summary Judgment as untimely. [ECF No. 127].

In his Report and Recommendation, filed on March 25, 2020, Magistrate Judge Parker found that the Motion for Summary Judgment should be granted. Plaintiff filed his response thirteen days after Magistrate Parker submitted his Report and Recommendation. In an abundance of caution, the Court will interpret Mills' response as an objection to the Report and Recommendation.

When a party objects to a Report and Recommendation, this Court is required to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); see also Longmire v. Guste, 921 F.2d 620, 623 (5th Cir. 1991). Those portions of the report not objected to are

reviewed only for plain error. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1428-29 (5th Cir.1996)(en banc), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1). "Parties filing objections must specifically identify those findings objected to. Frivolous, conclusive or general objections need not be considered by the district court." Allen v. Outlaw, No. 5:14-cv-60-DCB-MTP, 2015 WL 4759268, at * 2 (S.D. Miss. Aug. 12, 2015). Moreover, "[n]o factual objection is raised when a petitioner merely reurges arguments contained in the original petition." Hinton v. Pike County, No. 18-60817, 2018 WL 3142942, at *1 (S.D. Miss. June 27, 2018). The Court finds that Mills' objections are frivolous and conclusory and are therefore insufficient.

Having conducted a de novo review of the portions of the Report and Recommendation objected to, and having reviewed the remainder for plain error and finding none, the Court is satisfied that Magistrate Judge Parker has undertaken an extensive examination of the issues in this case and has issued a thorough opinion which the Court adopts.

Accordingly,

IT IS HEREBY ORDERED that Magistrate Judge Parker's Report and Recommendation [ECF No. 123] is hereby ADOPTED as the findings and conclusions of this Court;

FURTHER ORDERED that Plaintiff's objections to the Report and Recommendation are OVERRULED;

FURTHER ORDERED that Defendants Motion to Strike [ECF No. 127] is DENIED as MOOT;

FURTHER ORDERED that the Defendants' Motion for Summary Judgment [ECF No. 119] is GRANTED, and the action is dismissed with prejudice.

A final judgment dismissing the case with prejudice will follow in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED this the 8th day of July, 2020.

____/s/ David Bramlette_____

UNITED STATES DISTRICT JUDGE